

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

Docket
No. **76-6144**

In The
United States Court of Appeals

For the Second Circuit

CERVIA M. WEIMER,

Plaintiff-Appellant,

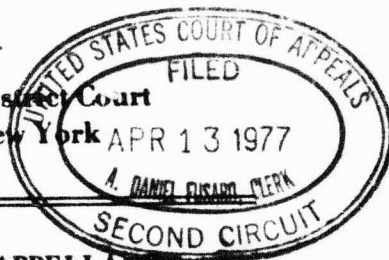
vs.

ELLIOT RICHARDSON, Secretary of Health,
Education and Welfare,

Defendant-Appellee.

In Forma Pauperis

Appeal from the United States District Court
for the Western District of New York



REPLY BRIEF FOR PLAINTIFF-APPELLANT

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REPLY BRIEF FOR PLAINTIFF-APPELLANT

In the case below the plaintiff was not represented by counsel until the submission to Judge Burke when the Government made a motion for summary judgment.

In the case of Cutler vs Weinberger, 516 Fed (2nd) 1282 Second Circuit it was held that where disability benefits claimant is unassisted by counsel, administrative judge has duty to explore all relevant facts. Also see Domzik vs Cohen, 413 Fed (2nd) 5 at 9 Third Circuit.

Deyo vs Weinberger, 406 Fed Supp 968 at 974.

In the Cutler case above cited the Second Circuit held "physical or mental impairment does not cease to exist merely because it is difficult of proof".

Subjective evidence of pain and suffering, a patient is suffering as attested to by witnesses having knowledge of his life, must be considered since "it is common knowledge that physical phenomenon of a debilitating nature works differing degrees on different persons".

Ber vs Celebrezza, 332 Fed (2nd) 293-299 Second Circuit 1964.

POINT I

THERE IS NO EVIDENCE BY A VOCATIONAL EXPERT THAT THE CLAIMANT COULD FOLLOW A GAINFUL OCCUPATION.

It is respectfully submitted that the plaintiff in this case has presented a prima facie case of total and permanent disability. In such a case the burden shifts to the government to go forward with proof that claimant nonetheless has residual for "substantial gainful activity".

Gray vs Finch, 427 Fed (2nd) 336 (6th Cir).

Miracle vs Calebrezza, 351 Fed (2nd) 361, (6th Cir).

Noe vs Weinberger, 512 Fed (2nd) 588.

In all social security cases it must be shown:

1. Objective medical facts.
2. Diagnosis or medical opinion based on these facts.
3. Subjective evidence of pain and disability testified to by the disability benefits claimant.
4. Claimant's educational background, age and work experience.

Kenny vs Weinberger, 417 Fed Supp 393, July 30th, 1976.

CONCLUSION.

It is respectfully submitted that the defendant has failed in both above requirements.

The decision of reversal should be granted.

Respectfully Submitted,

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Affidavit of Service

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